



Property Tax Exemptions

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Deductions, Exemptions, and Credits, Oh My!

- What's the difference between a deduction, an exemption, and a credit?
- A deduction reduces the assessed value being taxed, an exemption excludes property from assessment and/or taxation, and a credit reduces the tax bill.



Let's Be Precise, Here...

- Exemption → property that is not taxable (to whatever extent).
 - E.g., churches, charitable organizations
 - IC 6-1.1-10; IC 6-1.1-11
- Deduction → reduces the taxable AV of a property by a fixed dollar amount.
 - E.g., Homestead, Mortgage, Over 65, Disabled Veteran
 - IC 6-1.1-12
- Credit → reduces the net tax bill by a designated percentage or prevents a tax bill from exceeding a certain percentage.
 - Circuit Breaker, Over 65, LOIT Homestead



The Lawyerly Disclaimer

- This presentation and other Department of Local Government Finance materials are not a substitute for the law! This is not legal advice, just an informative presentation. The Indiana Code always governs.
- Most importantly, if you're not sure about something, ask first! The Department will do its best to answer your questions. If the Department can't help, it will either refer you to the right agency or to your county attorney. Don't rely on rumors or third party information.



The Legal Basis for Exemptions

- Article 10, Section 1 of the Indiana Constitution permits the Legislature to exempt certain classes of property from property taxation.
- IC 6-1.1-10 contains most of the exemptions available, but exemptions may be found throughout the Code.
- Exemption procedures are found in IC 6-1.1-11. The procedures include application requirements, deadlines, et cetera.



A Privilege, Not a Right...

- An exemption is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption. IC 6-1.1-11-1.
- The burden is on the applicant to show that the predominant part of the property claimed to be exempt is substantially related to the exercise or performance of the applicant's exempt purpose. IC 6-1.1-11-3(d).



Applying for an Exemption

- Application (Form 136) must be filed with the county assessor on or before April 1 of the assessment year, starting in 2016.
 - April 1, 2016, for the 2016-pay-2017 property taxes.
- See IC 6-1.1-11-3.
- If the Property Tax Assessment Board of Appeals (“PTABOA”) denies the application, it has no later than April 25 to provide notice to the taxpayer.
- However, the exemption application is not required if the exempt property is owned by the United States, the state, an agency of this state, or a political subdivision (as defined in IC 36-1-2-13). This exception applies only when the property is used, and, in the case of real property, occupied, by the owner.



Applying for an Exemption

IC 6-1.1-11-4(d):

Ordinarily, the exemption must be re-filed every even year unless:

- (1) the exempt property is:
 - (A) tangible property used for religious purposes described in IC 6-1.1-10-21;
 - (B) tangible property owned by a church or religious society used for educational purposes described in IC 6-1.1-10-16;
 - (C) other tangible property owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes described in IC 6-1.1-10-16; or
 - (D) other tangible property owned by a fraternity or sorority (as defined in IC 6-1.1-10-24).
- (2) the exemption application was filed properly at least once for a religious use under IC 6-1.1-10-21, an educational, literary, scientific, religious, or charitable use under IC 6-1.1-10-16, or use by a fraternity or sorority under IC 6-1.1-10-24; and
- (3) the property continues to meet the requirements for an exemption under IC 6-1.1-10-16, IC 6-1.1-10-21, or IC 6-1.1-10-24.

NOTE: The exemption application is not required if the exempt property is owned by the United States, the state, an agency of this state, or a political subdivision. However, this is true only when the property is used, and in the case of real property occupied, by the owner!



Applying for an Exemption

- Question: Why are some properties automatically exempt from taxation, and why do some have to fill out Form 136?
- Answer: Properties that are exempt by law, such as those owned by federal, state, or local units of government are exempt and do not require an Exemption Application. Other entities, that are exempt by filing (e.g., those that are owned, used, or occupied for educational, literary, scientific, religious or charitable purposes) must file and receive approval for their Exemption Application. See IC 6-1.1-11-4.



Granting an Exemption

- In order to grant an application for an exemption, in whole or in part, the county PTABOA must find that the statutory prerequisites for an exemption have been met. If any of the statutory prerequisites have not been met, the exemption cannot be granted.
- If the application is denied in whole or in part, notice of that action will be given on Form 120 (link: <https://forms.in.gov/Download.aspx?id=5600>).
- An applicant may appeal to the Indiana Board of Tax Review ("IBTR") within thirty (30) days from the date the notice of rejection is given by the county PTABOA.
- Note: IC 6-1.1-11-7(c) states the appeal must be filed within 30 days. The IBTR website and rules, following IC 6-1.1-15-3, state an appeal can be filed within 45 days of the notice of rejection.



Granting an Exemption

- An exemption may include real property, personal property, or both.
- An exemption amount may be up to 100%, or a certain percentage, depending on the circumstances.
- The taxpayer must submit evidence that the property qualifies for exemption under a specific statute.
- Failure to provide documentation such as Articles of Incorporation, By-laws, and Income and Expense Statements, may result in the denial of the exemption sought.



Change in Use or Ownership

- Starting January 1, 2016, if an exemption is validly in place on the assessment date, it will remain in place for that assessment date even if the property's use or ownership changes following the assessment date (see IC 6-1.1-11-1.5, as introduced by SEA 420-2014).
- Through 2015, state law requires the exemption to be removed for an assessment date when the property's use or ownership changed following that assessment date in such a way that it no longer qualifies for an exemption. If the property remains eligible for an exemption following the change in use or ownership, the exemption can be left in place (see IC 6-1.1-11-4).



Change in Use or Ownership

- In all cases, the person that obtained the exemption or the current owner of the property shall notify the county assessor for the county where the tangible property is located of the change in ownership or use in the year that the change occurs. This is via the Form 136-CO/U.
- Starting in 2016, because IC 6-1.1-11-1.5 requires the exemption to be left in place for an assessment date despite a change in use or ownership following the assessment date, the 136-CO/U will be more about helping the assessor know whether or not to pull the exemption in the original owner's name for the following assessment date. The new owner would have to apply for the exemption in its own name for the following assessment date.



Exemptions Meet Deductions

IC 6-1.1-12-46:

For an assessment date in 2011 or later, if:

1. Real property is not exempt on the assessment date;
 2. The Title is transferred before December 31; and
 3. The new owner applies for an exemption for the next assessment date and the PTABOA determines the new owner qualifies for the exemption;
- for the non-exempt assessment date, any deductions and related tax cap credits should be applied to the property such that the exempt property will benefit.



Exemptions Meet Deductions

- Example:
- John Smith owns a property as of January 1, 2016, and is eligible to receive the homestead and mortgage deductions on this property. The property is not exempt for the January 1, 2016, assessment date. John Smith sells his property to a church on or before December 31, 2016. The church applies for an exemption for the January 1, 2017, assessment date and the PTABOA determines it is exempt for the January 1, 2017, assessment date. The church will receive the benefit of John Smith's deductions for the 2016-pay-2017 property taxes, as well as the property tax cap that would have been applied to the property under John Smith's ownership. The church's exemption will apply for the 2017-pay-2018 property taxes.
- (See DLGF's May 19, 2011, memo:
[http://www.in.gov/dlgf/files/110519 - Stanley Memo - Exemptions HEA 1004-2011.pdf](http://www.in.gov/dlgf/files/110519_-_Stanley_Memo_-_Exemptions_HEA_1004-2011.pdf))



United States Property

- The property of the United States (and its agencies and instrumentalities) is exempt from property taxation to the extent that this state is prohibited by law from taxing it.
- However, any interest in tangible property held by the United States must be assessed and taxed to the extent the state is not prohibited from taxing it by the Constitution of the United States.
(IC 6-1.1-10-1)



State Property

IC 6-1.1-10-2

State property; property leased to a state agency

Sec. 2. (a) Except as otherwise provided by law, the property owned by this state, a state agency, or the bureau of motor vehicles commission is exempt from property taxation.

(b) Real property leased to a state agency is exempt from property taxes if the lease, regardless of the commencement date, requires the state agency to reimburse the owner for property taxes. If a state agency leases less than all of a parcel of real property, the exemption provided by this subsection is a partial exemption that is equal to the part of the gross assessed value of the real property attributable to the part of the real property leased by the state agency.



Political Subdivision and Municipal Property

IC 6-1.1-10-4

Political subdivision property

- Sec. 4. Except as otherwise provided by law, the property owned by a political subdivision of this state is exempt from property taxation.

IC 6-1.1-10-5

Municipal property

- Sec. 5. (a) Property is exempt from property taxation if it is owned by a city or town and is used to provide a municipal service.
(b) For purposes of this section, property used to provide a municipal service includes:
 - (1) a public school or library;
 - (2) a municipally owned park, golf course, playground, swimming pool, hospital, waterworks, electric utility, gas or heating plant, sewage treatment or disposal plant, cemetery, auditorium, or gymnasium; and
 - (3) any other municipally owned property, utility, or institution.



“Charitable” Exemption

IC 6-1.1-10-16 Version b

Exemption of building, land, and personal property used for various purposes; termination of eligibility for exemption

Sec. 16. (a) All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.

(b) A building is exempt from property taxation if it is owned, occupied, and used by a town, city, township, or county for educational, literary, scientific, fraternal, or charitable purposes.

(c) A tract of land, including the campus and athletic grounds of an educational institution, is exempt from property taxation if:

- 1) a building that is exempt under subsection (a) or (b) is situated on it;
- 2) a parking lot or structure that serves a building referred to in subdivision (1) is situated on it; or
- 3) the tract:
 - (A) is owned by a nonprofit entity established for the purpose of retaining and preserving land and water for their natural characteristics;
 - (B) does not exceed five hundred (500) acres; and
 - (C) is not used by the nonprofit entity to make a profit.



Religious Property

IC 6-1.1-10-21

Churches or religious societies

Sec. 21. (a) The following tangible property is exempt from property taxation if it is owned by, or held in trust for the use of, a church or religious society:

- (1) A building that is used for religious worship.
- (2) The pews and furniture contained within a building that is used for religious worship.
- (3) The tract of land upon which a building that is used for religious worship is situated.

(b) The following tangible property is exempt from property taxation if it is owned by, or held in trust for the use of, a church or religious society:

- (1) A building that is used as a parsonage.
- (2) The tract of land, not exceeding fifteen (15) acres, upon which a building that is used as a parsonage is situated.

(c) To obtain an exemption for parsonages, a church or religious society must provide the county assessor with an affidavit at the time the church or religious society applies for the exemptions. The affidavit must state that:

- (1) all parsonages are being used to house one (1) of the church's or religious society's rabbis, priests, preachers, ministers, or pastors; and
- (2) none of the parsonages are being used to make a profit.

The affidavit shall be signed under oath by the church's or religious society's head rabbi, priest, preacher, minister, or pastor.

(d) Property referred to in this section shall be assessed to the extent required under IC 6-1.1-11-9.



Assessment of Exempt Property

IC 6-1.1-11-9

Assessment method; exemption for public properties

- Sec. 9. (a) Except as provided in subsection (b) of this section, all property otherwise subject to assessment under this article shall be assessed in the usual manner, whether or not it is exempt from taxation.
- (b) No assessment shall be made of property which is owned by the government of the United States, this state, an agency of this state, or a political subdivision of this state if the property is used, and in the case of real property occupied, by the owner.



Lease of Exempt Property

- IC 6-1.1-10-37
- Leases of exempt property; effect
- Sec. 37. (a) This section does not apply to the lease of a dwelling unit within a public housing project by the tenant of that dwelling unit.
- b) If real property that is exempt from taxation is leased to another whose property is not exempt and the leasing of the real property does not make it taxable, the leasehold estate and the appurtenances to the leasehold estate shall be assessed and taxed as if they were real property owned by the lessee or his assignee.
- c) If personal property that is exempt from taxation is leased to another whose property is not exempt and the leasing of the personal property does not make it taxable, the leased personal property shall be assessed and taxed as if it were personal property owned by the lessee or his assignee.



Lease of Exempt Property

IC 6-1.1-11-3.8

Notice to county assessor of lease of certain property; county assessor notice to department of local government finance;

department rules

Sec. 3.8. (a) This section applies to real property that after December 31, 2003, is:

- (1) exempt from property taxes:
 - (A) under an application filed under this chapter; or
 - (B) under:
 - (i) IC 6-1.1-10-2; or
 - (ii) IC 6-1.1-10-4; and
- (2) leased to an entity other than:
 - (A) a nonprofit entity;
 - (B) a governmental entity; or
 - (C) an individual who leases a dwelling unit in:
 - (i) a public housing project;
 - (ii) a nursing facility referred to in IC 12-15-14;
 - (iii) an assisted living facility; or
 - (iv) an affordable housing development.

(b) After December 31, 2003, each lessor of real property shall notify the county assessor of the county in which the real property is located in writing of:

- (1) the existence of the lease referred to in subsection (a)(2);
- (2) the term of that lease; and
- (3) the name and address of the lessee.

(c) Each county assessor shall annually notify the department of local government finance in writing of the information received by the county assessor under subsection (b).



Exempt Property Purchased under Contract

IC 6-1.1-10-41

Exempt property purchased under contract of sale by person not qualifying for exemption

If state or political subdivision real or personal property:

- (1) is being purchased under a contract of sale by another person:
 - (A) whose real or personal property is not exempt from taxation; and
 - (B) who is not engaged in an exempt purpose with the real or personal property; and
- (2) the contract of sale does not make the real or personal property taxable;

the real or personal property shall be assessed and taxed as if the real or personal property were owned by the purchaser or the purchaser's assignee.



The *Oaken Bucket* Case



The Oaken Bucket Case

HAMILTON COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS & HAMILTON COUNTY ASSESSOR v. OAKEN BUCKET PARTNERS, LLC, 938 N.E.2d 654 (Ind. 2010), is a Indiana Supreme Court decision that counties should take heed of when reviewing property tax exemption applications filed by landlords who rent to religious or charitable organizations.



What's in this Oaken Bucket?

Some of the key points from the case:

- 1) In order to qualify for an exemption, the landlord must demonstrate a unity of ownership, occupancy, and use. That is, that the property:
 - a) is owned for exempt purposes,
 - b) occupied for exempt purposes, and
 - c) predominantly used for exempt purposes.When unity of ownership, occupancy, and use is lacking, both the landlord and tenant must demonstrate that they possess their own exempt purpose.
- 2) Charging below market rent for part of a building rented to a church or other religious or charitable organization is insufficient, standing alone, to justify a religious or charitable purpose property tax exemption.
- 3) Although the fact that a landlord charges below market rent to a charitable or religious organization may demonstrate some indicia of the landlord's beneficent motives, more is required to show the landlord has its own exempt purpose.



What's in this Oaken Bucket?

- In essence, charging below market rent to an exempt entity does not, without more, establish an exempt purpose on the part of the property owner.



2015 Legislation



2015 Legislation

- HEA 1388 introduces a new statute governing the assessment of common areas. This statute took effect upon passage of HEA 1388 and thus affects assessments beginning January 1, 2016.
- Section 11 of SEA 436, which was signed by the Governor on May 6, 2015, introduces IC 6-1.1-10-16.8, which provides for an exemption for select flooded basements. The statute was effective upon passage of SEA 436.



2015 Legislation

- Section 3 of SEA 436 institutes changes to the exemption of business personal property with a total acquisition cost of less than \$20,000 in the county (this exemption was introduced by Senate Enrolled Act 1 in 2014 and was originally designed to be an option counties could implement). Section 3 amends IC 6-1.1-3-7.2 so that this exemption is no longer a county option; effective July 1, 2015, the exemption is automatic statewide. Please see the memo at [http://www.in.gov/dlgf/files/pdf/150518 - Schaafsma Memo - Legislative Changes Affecting Personal Property Assessments.pdf](http://www.in.gov/dlgf/files/pdf/150518_-_Schaafsma_Memo_-_Legislative_Changes_Affecting_Personal_Property_Assessments.pdf) for more information.
- Section 2 of SEA 1-2014 adds IC 6-1.1-10.3, effective July 1, 2015, which provides for a county option tax exemption for new business personal property for a particular assessment date.



Thank you!

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